SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 1096

LIZZIE MAY McCULLOUGH, EXECUTRIX OF THE ESTATE OF IDA REID, DECEASED, PETITIONER,

vs.

W. M. SMITH, ADMINISTRATOR OF THE ESTATE OF MOSES REID, DECEASED

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA

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IN SUPREME COURT OF NORTH CAROLINA, FOURTEENTH DISTRICT, FALL TERM, 1933

No. 399

In the Matter of the Estate of Moses Reid, Deceased

Before Cowper, J., November 14, 1932, Special Term, Mecklenburg Superior Court—Executrix of the Estate of Ida Reid, Deceased, Appealed

This is an appeal by the executrix of the estate of Ida Reid, deceased, from the judgment entered in the cause upon the hearing of the following petition of W. M. Smith, Administrator of the estate of Moses Reid, deceased, for a declaratory judgment directing him in his administration of the estate, to the end that he may distribute the assets of the estate in accord with the law:

In Superior Court of Mecklenburg County

Application for Declaratory Judgment

To Hon. James M. Yandle, Clerk Superior Court for Mecklenburg County, North Carolina:

W. M. Smith would respectfully show to the Court the facts hereinafter set forth, and upon such statement of facts he respectfully requests that the Clerk of the Superior Court for Mecklenburg County forward the papers in this proceeding to the Judge Presiding over the Superior Courts of Mecklenburg County, to the end that a Declaratory Judgment may be rendered in this cause as provided in the Uniform Declaratory Judgment Act, Chapter 102, Public Laws 1931.

Statement of Facts

1. W. M. Smith is the duly qualified and acting admin-
[fol. 2] istrator of the estate of Moses Reid, deceased, colored soldier in the United States Army in the World War.

2. That as such administrator he has received from the Bureau of War Risk Insurance the sum of $6630.50 as the

amount due the estate of the said Moses Reid from a policy of War Risk Insurance obtained by the said Moses Reid while in the United States Military Service; that the aforesaid sum represents the balance due after the death of his father and his mother, who were beneficiaries named in his policy; and that the said sum is now held by the aforesaid administrator subject to distribution to those entitled to the same under the law.

3. That the said Moses Reid died, intestate, and without leaving a wife or child or issue of a child, on August 23, 1920; that his father, Adolphus Reid, died November 22, 1926; and his mother, Ida Reid, died February 22, 1932; that the father and the mother were named in the policy as beneficiaries; and that the estate of the father is represented by Elijah Reid, who has been duly appointed administrator, and is acting in such capacity; and the estate of the mother is represented by Lizzie May McCullough, who was named executrix in the will of Ida Reid, and is now acting in such capacity; that both the administrator of the father's estate and the executrix of the mother's estate have furnished bonds with approved sureties.

4. That a real controversy has developed between the sons and the daughter of the said Adolphus Reid and Ida Reid over the distribution of the assets of the estate of Moses Reid now in the hands of your petitioner; that the basis of the controversy is partly due to the fact that prior to her death Ida Reid executed a paper writing purporting to be a will, and which has been probated as a will by the said Lizzie May McCullough, who is therein named as sole devisee and who is therein appointed executrix; that the three sons of the said Ida Reid have filed a Caveat to the [fol. 3] said purported will, the said caveators being Ross, Elijah and Adolphus Reid, who, with their sister, Lizzie May McCullough, are all of the next of kin and heirs of the said Ida Reid and the said Adolphus Reid.

5. That the funds in the hands of your petitioner are not subject to claims of creditors under the Act of Congress creating a War Risk Insurance, but are subject to distribution to those persons who are entitled to the same under the law.

6. That the paper writing above referred to and which purports to be the last will of Ida Reid, a copy of which is

hereto attached, contains language which the devisee therein, Lizzie May McCullough, contends gives to her the entire estate of her mother, Ida Reid, which consists solely of the money derived from the War Risk Insurance on the life of Moses Reid, whose estate your petitioner is administering; that approximately Four Thousand Dollars had accrued to the estate of Ida Reid prior to her death in the form of monthly installments, none of which she received in her lifetime, but all of which have been paid to the said administratrix, and which fund is now in her hands; that in addition to the fund arising from the said monthly installments, the said Lizzie May McCullough claims that portion of the fund in the hands of your petitioner that goes to the estate of the mother as distributee of the estate of Moses Reid, alleging that the will entitles her to receive the same.

7. That Elijah Reid, as administrator of the estate of Adolphus Reid, father of the insured soldier, Moses Reid, claims a portion of the funds in the hands of your petitioner for the estate of the father.

Wherefore, your petitioner seeks to have rendered for his guidance a Declaratory Judgment as provided in Public Laws, 1931, Chapter 102, declaring what he shall do under the circumstances set forth; and directing him in his administration of the estate of Moses Reid, to the end that he may distribute the assets of the said estate in accord [fol. 4] with the law; and he especially requests a full statement on the following points:

1. Did Ida Reid have an interest in or right to any part of the funds in the hands of your petitioner that she could devise?

2. What sums are due from your petitioner as administrator of the estate of Moses Reid to the administrator of the estate of Adolphus Reid and to the executrix of the estate of Ida Reid, in the light of the fact that each of said estates has already received unequal sums from the War Risk Insurance policy of their deceased son, Moses Reid, whose insurance provided the only assets in the three estates under consideration.

W. M. Smith, Administrator of Moses Reid.

Duly sworn to by W. M. Smith. Jurat omitted in printing.

EXHIBIT TO APPLICATION

Will of Mrs. Ida Reid, North Carolina, Mecklenburg County, City of Charlotte

Will

I, Ida Reid, of 318 Star Street, of the City of Charlotte, of the aforesaid County and State, being of sound and disposing mind, but considering the uncertainty of my earthly existence, do make and declare this my last Will and Testament.

1. My executor, hereinafter named, shall give my body a decent burial and pay all funeral expenses, together with my just debts, out of the first monies which may come into her hands, belonging to my estate.

[fol. 5] 2. I give, devise and bequeath all of my property to my beloved daughter, Lizzie May McCullough, of the above aforesaid County and State.

3. I devise and bequeath all property that I may be entitled to, from any and all persons, including my son, Moses Reid, who died about 1920 or 1921, that may come into my legal possession after my death, to my beloved daughter, Lizzie May McCullough, of the aforesaid county and state.

4. I devise and bequeath all of my property, of all kinds, to my daughter, Lizzie May McCullough, simply because, during my recent years of illness, my beloved daughter, Lizzie May McCullough, has taken care of me in a very splendid manner, in fact, I have made my home with her.

5. In case Lizzie May McCullough does not survive me, at my death, then it is my wish and desire, and I do hereby devise and bequeath all my estate, of all kinds, to her children.

6. I have other children living at present, to-wit: Ross Reid, Elijah Reid, Adolphus Reid, all of Mecklenburg County. I have intentionally omitted to provide for Ross Reid, Elijah Reid and Adolphus Reid, and I hereby declare that such omission is intentional and not occasioned by accident or mistake.

7. I hereby constitute and appoint my beloved daughter, Lizzie May McCullough, my lawful executor to all intents and purposes, to execute this my last Will and Testament, without bond, according to the true and intent meaning of the same, and every part and clause thereof, hereby revoking and declaring utterly void all other Wills and Testaments by me, heretofore made.

In witness whereof, I, the said Ida Reid, do hereunto set my hand and seal, this the 19th day of February, 1932.

——— ———. (Seal.)

Signed, sealed, published and declared by the said Ida Reid to be her last Will and Testament, in the presence of us, who at her request, and in her presence, and in the pres- [fol. 6] ence of each other, do subscribe our names as witnesses thereto.

———— ———. ———— ———.

No answers were filed to the petition.

Upon hearing the petition and argument of counsel, all parties in interest having been represented at the hearing, His Honor, G. V. Cowper, Judge Presiding, entered the following judgment:

IN SUPERIOR COURT OF MECKLENBURG COUNTY

JUDGMENT

This cause coming on for hearing before Hon. G. V. Cowper, Judge Presiding, at a Special Term of the Superior Court for Mecklenburg County, and being heard upon the petition of W. M. Smith, Administrator of the Estate of Moses Reid, a deceased soldier of the United States in the World War; and it appearing that all parties in interest were represented at the hearing, the executrix of the estate of Ida Reid, mother of the deceased soldier, being represented by Mr. J. H. McLain, and the administrator of the estate of the father of said deceased soldier, Adolphus Reid, being represented by Mr. Wade H. Williams; and it being agreed by all parties that the following facts may be found by the Court, and the Court thereupon finding the following facts to be true, to-wit:

1. Moses Reid, deceased, died intestate, unmarried in Mecklenburg County on Aug. 23, 1920, leaving him sur-

viving his father, Adolphus Reid, and his mother, Ida Reid; and that at the date of his death he held a policy of War Risk Insurance in the amount of $10,000.00, and that Adolphus Reid, his father, and Ida Reid, his mother, were named therein as beneficiaries.

2. That Adolphus Reid and Ida Reid as beneficiaries were entitled to receive, after the death of the insured, monthly installments from said insurance in the sum of $28.75 each for a total of two hundred and forty months, if they should live to receive them; but Adolphus Reid died intestate in Mecklenburg County on the 22nd day of November, 1926, [fol. 7] and that he did not in his lifetime receive any of the installments to which he became entitled upon the death of the insured; and that Ida Reid died in Mecklenburg County on the 22nd of February, 1932, leaving a will, to which a caveat has been filed, and that she did not receive any of the installments to which she became entitled upon the death of the insured.

3. That the executrix named in the will of Ida Reid, Lizzie May McCullough, has received from the Bureau of War Risk Insurance the aggregate of all the monthly installments to which Ida Reid was entitled under said policy as beneficiary in the sum of $3938.75; and that, as administrator of the estate of Adolphus Reid, Elijah Reid has received from the Bureau of War Risk Insurance the aggregate of the monthly installments to which the said Adolphus Reid was entitled under said policy as beneficiary in the sum of $2127.50.

4. That since the death of the last surviving beneficiary W. M. Smith has been named administrator of the estate of Moses Reid, the insured soldier, and has been paid the sum of $862.50 by the Bureau of War Risk Insurance as the aggregate of monthly payments to which the insured had been declared entitled to have received in his life, but which had not been paid; and the said administrator received from the Bureau of War Risk Insurance the further sum of $5,768.00 as the commuted value of the unpaid monthly installments due under the policy.

5. That no assets are held in either of the three estates mentioned except the proceeds of the said insurance policy; and that the total proceeds of said policy is at present held

in the following sums: Executrix of Ida Reid holds $3,938.75; Administrator of Adolphus Reid holds $2,127.50; and the administrator of the estate of the insured Moses Reid holds a total of $6,630.50, of which $862.50 represents accrued monthly payments due Moses Reid prior to his death, and $5,768.00 represents the commuted value of the unpaid installments under said policy.

[fol. 8] Wherefore, upon the statement of facts as above set out as found by the Court, the Court renders the following judgment:

1. That the facts of this case brings it within the application of the Uniform Declaratory Judgment Act as enacted by the General Assembly of North Carolina, Public Laws, 1931, Chapter 102.

2. That at the date of the death of Moses Reid his distributees were Adolphus Reid, his father, and Ida Reid, his mother, and as such distributees they became entitled upon his death to his personal estate.

3. That the money now in the hands of W. M. Smith, Administrator of the estate of Moses Reid, consisting entirely of insurance money from War Risk Insurance, is not subject to claims of creditors of the insured.

4. That as to the $862.50, which was due the insured prior to his death; it belongs to the estate of the father and the estate of the mother equally.

5. That as to the $5,768.00 received by him as the commuted value of the unpaid portion of the policy after the death of the beneficiaries, it should be paid to the estate of the father and the estate of the mother respectively in such sums as are required to bring the said estates to an equal sum after the sums paid into each by the Bureau of War Risk Insurance, and the half of the $862.50 have been added together; the intention of this finding being to make the estate of the father and the estate of the mother exactly equal finally. This ruling being based upon the decisions of the Supreme Court of North Carolina, as laid down in Pruden's Case, 199 N. C., 256, and in Holl's Case, 199 N. C., 666.

6. The Court in its discretion declines to rule on the question raised in the petition as to the right of Ida Reid to devise any part of the funds held by the petitioner.

Wherefore, it is ordered, adjudged and decreed that the said W. M. Smith, Administrator of Moses Reid, shall dis- [fol. 9] burse the funds in his hands belonging to the said estate and arising from a policy of War Risk Insurance on the life of the said Moses Reid, in accord with the above ruling, after payment of all costs of administration.

This the 26th day of November, 1932.

G. V. Cowper, Judge Presiding, etc.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

APPEAL ENTRIES

The Executrix of the Estate of Ida Reid, excepts to the judgment entered in the above entitled matter by His Honor, G. V. Cowper, on this the 26th day of November, 1932, and appeals therefrom to the Supreme Court of North Carolina. Notice of appeal given in open Court. Appellant allowed sixty days within which to prepare and serve statement of case on appeal, and appellee allowed sixty days thereafter in which to serve exceptions or counter-case. Appeal bond in the sum of $75.00 adjudged sufficient.

This 26th day of November, 1932.

G. V. Cowper, Judge Presiding.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

EXCEPTION AND ASSIGNMENT OF ERROR

The Executrix of the Estate of Ida Reid, Deceased, excepts to so much of the foregoing judgment as holds: "That as to the $5,768.00 received by him (the administrator of the estate of Moses Reid) as the commuted value of the unpaid portion of the policy after the death of the beneficiaries, it should be paid to the estate of the father and the estate of the mother respectively in such sums as are required to bring the said estates to an equal sum after the sums paid into each by the Bureau of War Risk Insurance, and the half of the $862.50 have been added together; the intention of this finding being to make the estate of the father and the estate of the mother exactly equal finally",

and assigns such holding and finding as error, for that, it does not conform to the provisions of the War Risk Insurance Act, 38 U. S. C. A., Sec. 514, and is in conflict with the provisions of the statute law of North Carolina relating [fol. 10] to the distribution of personal property of an intestate, C. S. 137, Subsection 6.

The foregoing is tendered as the statement of case on appeal to the Supreme Court of the Executrix of the Estate of Ida Reid, Deceased.

This January 24th, 1933.

J. H. McLain, Attorney for the Executrix of the Estate of Ida Reid, Deceased.

Service of the foregoing statement of case on appeal is hereby accepted and receipt of a copy thereof hereby acknowledged.

This January 24th, 1933.

Wade H. Williams, Attorney for the Administrator of the Estate of Adolphus Reid, Deceased.

IN SUPERIOR COURT OF MECKLENBURG COUNTY

AGREEMENT AS TO CASE ON APPEAL

It is hereby agreed that the foregoing shall constitute the case on appeal to the Supreme Court of North Carolina in the matter of the estate of Moses Reid, deceased; and it is further agreed that the petition, judgment and appeal entries shall constitute the transcript of the record on appeal.

This January 24, 1933.

Wade H. Williams, Attorney for the Administrator of the Estate of Adolphus Reid, Deceased. J. H. McLain, Attorney for the Executrix of the Estate of Ida Reid, Deceased. W. M. Smith, Administrator of the Estate of Moses Reid, Deceased.

(Transcript certified by Clerk Superior Court.)

A true copy.

Edward Murray, Clerk of the Supreme Court of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 11] In Supreme Court of North Carolina, Spring Term, 1934

No. 399

In the Case In re Estate of Moses Reid

Appeal docketed 11 April, 1933.
Case Argued 8 November, 1933.
Opinion filed 28 February, 1934.
Judgment Affirmed.
Opinion certified to Superior Court on 2 April, 1934.
A True Copy.

Edward Murray, Supreme Court Clerk.

[fol. 12] In Supreme Court of North Carolina, Spring Term, 1934

In the Matter of the Estate of Moses Reid, Deceased

Civil action, Before Cowper, Special J., November Special Term, Mecklenburg Superior Court

Moses Reid, a soldier in the United States Army during the world war, died intestate on August 23, 1920, without leaving a wife or child or issue of such. He left him surviving his father, Adolphus Reid, and his mother, Ida Reid. Adolphus Reid, the father, died on November 22, 1926, and his mother, Ida, died February 22, 1932. The deceased soldier had a policy of War Risk Insurance in the sum of $10,000.00. In said policy his father and mother were both named beneficiaries. W. M. Smith is the administrator of the estate of the soldier, Moses Reid. Elijah Reid is the administrator of the Estate of Adolphus Reid, the father, and Lizzie May McCulloch is the executrix named in the will of the mother, Ida Reid. The father and mother after the death of the soldier were entitled to receive a monthly installment of $28.75 each for a total of 240 months. However, neither of said beneficiaries received any installment prior to death. The Bureau of War Risk Insurance paid to the administrator of the father the aggregate monthly installments which he would have received up to the time of his death, amounting to $2,127.50. The installments the

mother would have received amounting to $3,938.75, were paid to her executrix. The sum of $6,630.50 was paid to W. M. Smith, the administrator of the estate of the soldier. The children of the mother, Ida Reid, have filed a caveat to her will. The validity of the will has not yet been determined.

This proceeding was brought to determine the rights of the parties in and to the estate of the soldier. It was admitted that the only property of said estate consisted of War Risk Insurance and disability insurance paid by the government.

[fol. 13] The pertinent portion of the judgment rendered was as follows: "That at the date of the death of Moses Reid his distributees were Adolphus Reid, his father, and Ida Reid, his mother, and as such distributees they became entitled upon his death to his personal estate. That the money now in the hands of W. M. Smith, administrator of the estate of Moses Reid, consisting entirely of insurance money from War Risk Insurance, is not subject to claims of creditors of the insured. That as to the $862.50, which was due the insured prior to his death, it belongs to the estate of the father and the estate of the mother equally. That as to the $5,768.00 received by him as the commuted value of the unpaid portion of the policy after the death of the beneficiaries, it should be paid to the estate of the father and the estate of the mother respectively in such sums as are required to bring the said estates to an equal sum after the sums paid into each by the Bureau of War Risk Insurance, and the half of the $862.50 have been added to make the estate of the father and the estate of the mother exactly equal finally.** The court in its discretion declines to rule on the question raised in the petition as to the right of Ida Reid to devise any part of the funds held by the petitioner."

From the foregoing judgment the executrix of the estate of Ida Reid, deceased, appealed.

J. H. McLain, Attorney for Executrix of the Estate of Ida Reid, Dec'd. Wade H. Williams, Attorney for the Administrator of the Estate of Moses Reid, deceased.

OPINION

BROGDEN, J:

When Moses Reid died his distributees were his father, Adolphus Reid, and his mother, Ida Reid. Both were living. The statute cast upon each one-half of the personal property of deceased. Thereupon the right of property to such one-half immediately vested. C. S. 137, sub-section 6.

Neither received as beneficiary in the War Risk Insurance policy any installment from the government during his or her life. Therefore, the whole fund in contemplation of law is now assets of the estate of the dead soldier, to be distributed immediately to the estates of his father and mother. The fact that one beneficiary lived longer than the [fol. 14] other and hence entitled to receive more money in installments from the government, has nothing to do with the right of property as distributee. The intestate law of this state pegged that right at the death of the soldier. In re Estate of Pruden, 199 N. C., 256, 154 S. E., 7; Grady v. Holl, 199 N. C., 155 S. E., 565; Mixon v. Mixon, 203 N. C., 566, 166 S. E., 516; In re Sanders, 205 N. C., 241; Singleton v. Cheek, 284 U. S., 493, 76 Law. Ed. 419. See also Stacy v. Culbertson, et als, 160 S. E., 50.

Affirmed.

A true copy.

Edward Murray, Clerk of the Supreme Court of North Carolina. (Seal of the Supreme Court of the State of North Carolina.)

[fol. 13] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed October 8, 1934

The petition herein for a writ of certiorari to the Supreme Court of the State of North Carolina is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1933

No. 1096

LIZZIE MAY McCULLOUGH, Executrix of the Estate of Ida Reid, Deceased,

Petitioner,

vs.

W. M. SMITH, Administrator of the Estate of Moses Reid, Deceased.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NORTH CAROLINA.

To the Honorable Supreme Court of the United States:

The petition of Lizzie May McCullough, Executrix of the Estate of Ida Reid, Deceased, respectfully shows to the Court:

I.

Statement of Facts.

Moses Reid, a veteran of the World War and the holder of a certificate of war risk insurance in the amount of $10,000, in which his father, Adolphus Reid, and his mother, Ida Reid, were named as beneficiaries, died intestate and without wife or issue on August 23, 1920, leaving surviving him his said father and mother as the distributees entitled under the statute law of the State of North Carolina to share equally his personal estate; his father died intestate

on November 22, 1926, and his mother died February 22, 1932, leaving a last will and testament in which her daughter, Lizzie May McCullough, was named as beneficiary and executrix (R. 1-2). No payments were made to any one on account of the certificate of insurance until after the death of the last surviving beneficiary on February 22, 1932. After the death of the last surviving beneficiary the Veterans' Bureau awarded the sum of $2,127.50 to the estate of the father, representing accrued monthly payments to which he was entitled prior to his death; the sum of $3,938.75 to the estate of the mother, representing accrued monthly payments to which she was entitled prior to her death; the sum of $862.50 to the estate of the insured, representing accrued monthly disability payments to which he was entitled prior to his death, and the further sum of $5,768 to the estate of the insured, representing the commuted value of unpaid installments at the time of the death of the last surviving beneficiary. The Veterans' Bureau required that a legal representative qualify to administer each estate before making payment of the sums awarded to the respective estates. Elijah Reid qualified as administrator of the estate of the father and has received the sum of $2,127.50; Lizzie May McCullough qualified as executrix of the estate of the mother and has received the sum of $3,938.75, and W. M. Smith qualified as administrator of the estate of the insured and has received the total sum of $6,630.50 (R. 6-7).

II.

Proceedings in State Courts.

On October 27, 1932, W. M. Smith, Administrator of the Estate of Moses Reid, made application to the Superior Court of Mecklenburg County, North Carolina, for a declaratory judgment directing him in the administration

of the estate of the insured (R. 1-4). The application for a declaratory judgment came on for hearing before the Judge presiding at the November 14, 1932, Special Term of the Superior Court of Mecklenburg County, and the judgment which appears on pages 5 to 8 of the record was entered on November 26, 1932. The Executrix of the Estate of Ida Reid appealed from the judgment to the Supreme Court of North Carolina, excepting to and assigning as error the following portion of the judgment: "That as to the $5,768.00 received by him as the commuted value of the unpaid portion of the policy after the death of the beneficiaries, it should be paid to the estate of the father and the estate of the mother respectively in such sums as are required to bring the said estates to an equal sum after the sums paid into each by the Bureau of War Risk Insurance, and the half of the $862.50 have been added together; the intention of this finding being to make the estate of the father and the estate of the mother exactly equal finally." (R. 7.) The appeal was before the Supreme Court of North Carolina at the Fall Term, 1933. The Superior Court judgment was affirmed by the Supreme Court. The Supreme Court opinion was certified to the Superior Court on April 2, 1934, as shown by certificate of the Supreme Court clerk filed herewith, and the judgment thereupon became a final judgment of the Superior Court of Mecklenburg County.

III.

Reason Writ Should Be Granted.

The opinion of the Supreme Court of North Carolina, certified copy of which is filed herewith, has been reported in 173 S. E. at page 49. It holds in brief that inasmuch as neither beneficiary in the War Risk Insurance policy received any installment from the government during his or her life, the whole fund, including the awards made by

the Veterans' Bureau to the estates of the beneficiaries, in contemplation of law is now assets of the estate of the dead soldier, to be distributed immediately share and share alike to the estates of his father and mother. This opinion deals with three separate estates arising out of a contract between the Federal Government and a World War veteran in which the father and mother of the veteran were designated as beneficiaries. It decides a Federal question of substance in a way not in accord with applicable decisions of the Supreme Court of the United States. It disregards entirely the awards of accrued monthly payments made to the estates of the beneficiaries by the Veterans' Bureau under the provisions of the World War Veterans' Act as interpreted by applicable decisions of the Federal courts.

WHEREFORE, your petitioner prays that a writ of certiorari be issued under the seal of the Court, directed to the Supreme Court of the State of North Carolina, sitting at Raleigh, North Carolina, commanding that court to send up to this Court on a day to be designated a full and complete transcript of the record and all proceedings of that court in the action entitled "In the Matter of the Estate of Moses Reid," being No. 399 on the docket of said court, to the end that the said action may be reviewed and your petitioner granted such relief or remedy in the premises as to this Honorable Court may seem just and proper, and your petitioner will ever pray.

JOHN M. ROBINSON,
Counsel for Lizzie May McCullough,
Executrix of the Estate of Ida Reid,
Deceased, Petitioner.

J. H. MCLAIN,
Of Counsel.

BRIEF IN SUPPORT OF PETITION.

Opinion of State Court.

The opinion of the Supreme Court of North Carolina has been reported in 173 S. E., page 49. A certified copy of the opinion in full is filed with the record.

Jurisdiction.

The opinion of the Supreme Court of North Carolina was filed in the office of the clerk of that court on February 28, 1934; was certified by the clerk of that court to the Superior Court of Mecklenburg County on April 2, 1934, and thereupon became a final judgment of the Superior Court of Mecklenburg County, North Carolina. Certificate of the clerk of the Supreme Court of North Carolina is on file with the record.

The jurisdiction of this Court is invoked under Section 237(b) of the Judicial Code, as amended by the Act of February 13, 1925.

Facts.

The facts are succinctly stated in the petition (pages 1 and 2) and are fully stated in the agreed statement of facts appearing in the judgment of the Superior Court of Mecklenburg County (R. 5-7).

Question Involved.

The opinion of the Supreme Court of North Carolina is in conflict with the provisions of the World War Veterans' Act 1924, Sec. 303, as amended by Act March 4, 1925 (38 U. S. C. A. Sec. 514) and with the applicable decisions of the Supreme Court of the United States in holding that the

whole fund arising out of the certificate of War Risk Insurance held by insured, including the awards of accrued monthly installments made by the Veterans' Bureau to the designated beneficiaries, now constitutes assets of the estate of the dead soldier.

Petitioner's Contention.

Three separate and distinct estates arose out of the proceeds from the certificate of War Risk Insurance held by Moses Reid. The Veterans' Bureau required that a legal representative qualify to administer each estate before payment of the awards was made. Each estate should be administered in accordance with the laws of North Carolina without regard to the amounts awarded to the other two estates or either of them. The judgment of the state court should be modified so as to direct the administrator of the estate of Moses Reid to distribute the $6,630.50 awarded by the Veterans' Bureau to said estate in accordance with the intestate laws of the state of North Carolina without regard to the amounts awarded to the estates of the beneficiaries.

ARGUMENT.

Rights of Designated Beneficiaries.

In the case of *U. S.* v. *Woolen* (C. C. A., Tenn., 1928), 25 F. (2d) 673, the designated beneficiary in a certificate of War Risk Insurance was held *to be vested with all unpaid installments which accrued before her death*, and it was further held that title thereto passed under state laws to her successors. On appeal to the Supreme Court of the United States, 278 U. S. 665, 49 S. Ct. 249, the case was remanded with instructions *to enter judgment in*

favor of the respondent for the amount of the accrued installments without interest, the lower court having erroneously awarded interest.

That the beneficiary of War Risk Insurance has no vested rights in installments falling due after the death of the beneficiary is held in the case of *U. S.* v. *Worley*, 281 U. S. 339, 50 S. Ct. 291.

Estate of Insured.

The case of *Singleton* v. *Cheek*, 284 U. S. 493, 76 L. Ed. 419, is cited in the opinion of the Supreme Court of North Carolina. To arrive at the true import of the decision in that case it is necessary to examine the report of the opinion of the State court of Oklahoma in 7 P. (2nd) 140. The Supreme Court of North Carolina surely had not made a full investigation and study before citing the case of the true meaning of the holding in the opinion of Justice Southerland that "All installments, whether accruing before or after the death of the beneficiary named in the certificate of insurance, as a result, became assets of the estate of the insured upon the instant of his death." The case of *Singleton* v. *Cheek* is parallel to the instant case as to facts except that there was one beneficiary instead of two. In that case, however, the award to the beneficiary was not in controversy. The opinion deals entirely with disability installments which had accrued before the death of the beneficiary and the commuted value of the unpaid installments falling due after the death of the beneficiary. It is most certainly not held in that case that the award made to the beneficiary constituted assets of the estate of the insured as that award was not in controversy. The estate of the insured in that case as in the instant case consisted entirely of accrued disability payments and commuted value of unpaid installments.

Prior North Carolina Decisions.

All the decisions of the Supreme Court of North Carolina are in accord with the decisions of the Supreme Court of the United States in holding that the heirs of an insured soldier are determined as of the instant of his death and not as of the date of the death of the beneficiary, but the decisions in the cases entitled: *In re Estate of Pruden,* 199 N. C. 256, 154 S. E. 7; *Grady* v. *Holl,* 199 N. C. 666, 155 S. E. 565, and the instant case are in conflict with the statute law of the United States and the United States Supreme Court decisions as to what constitutes the estate of the deceased soldier.

The Superior Court judge recites that the ruling in the fifth paragraph of his judgment (R. 7) is based upon the decisions of the Supreme Court of North Carolina, as laid down in *Pruden's* case, 199 N. C. 256, and in *Holl's* case, 199 N. C. 666. Neither the *Pruden* case nor the *Holl* case recognizes the fact that a beneficiary has a vested right in monthly payments accruing prior to the death of the beneficiary. In the *Holl* case the mother of the deceased soldier was still living and drawing monthly payments and for that reason was not allowed to participate in the distribution of the commuted value of the unpaid installments to which the father and co-beneficiary would have been entitled had he lived and which had been paid to the administrator of the estate of the deceased soldier to be distributed in accordance with the laws of the State of his domicile. The *Pruden* and *Holl* cases are different, if not distinguishable, from the instant case in that the beneficiaries were statutory and not designated, and in each case one of the beneficiaries was still living.

Conclusion.

Inasmuch as Adolphus Reid, the father, at the time of his death had a vested right to the $2,127.50 which has been paid into his estate, and Ida Reid, the mother, at the time of her death had a vested right to the $3,938.75, which has been paid into her estate (*U. S.* v. *Woolen,* 278 U. S. 665), the fact that these two amounts are not the same cannot be taken into consideration in the administration of the estate of the insured. In view of the decision in *U. S.* v. *Worley,* 281 U. S. 339, which holds that a beneficiary has no vested right in installments falling due after the death of the beneficiary, no portion of the estate of the insured can be arbitrarily lifted out of that estate and dumped into the estate of Adolphus Reid, the father, solely for the purpose of making that estate equal in amount to the estate of Ida Reid, the mother.

If the whole fund constitutes assets belonging to the estate of insured, the administrations required by the Veterans' Bureau on the estates of the father and mother are superfluous, and the whole fund should have been awarded to the estate of insured.

For the purposes of the administration of the estate of Moses Reid, Adolphus Reid, the father, and Ida Reid, the mother, are separate and distinct identities from Adolphus Reid and Ida Reid as heirs at law or distributees of the insured. If the designated beneficiaries in the certificate of insurance held by Moses Reid had been an uncle and an aunt or a brother and a sister instead of his father and mother, the decision of the State court in the instant case would fall flat and become an absurdity. In such event, the fact that the uncle and aunt of brother and sister had received unequal amounts could hardly be considered in the distribution of the estate of insured to the estates of his father and mother.

For the reasons set out in the petition and brief, and to the end that the decisions of the Supreme Court of North Carolina in respect to the administration of the estates of deceased soldiers arising out of War Risk Insurance may more nearly conform to the decisions of the United States Supreme Court and administrators in North Carolina on such estates may not be confronted with such conflict of authority, it is respectfully submitted that the petition for a writ of certiorari should be granted.

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Executrix of the Estate of Ida Reid,
Deceased, Petitioner.

J. H. MCLAIN,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 72.—October Term, 1934.

Lizzie May McCullough, Executrix of the Estate of Ida Reid, Deceased, Petitioner,
vs.
W. M. Smith, Administrator of the Estate of Moses Reid, Deceased.

On Writ of Certiorari to the Supreme Court of the State of North Carolina.

[December 3, 1934.]

Mr. Justice McReynolds delivered the opinion of the Court.

While in the military service of the United States Moses Reid took out a War Risk Insurance policy for $10,000 and designated his father and mother as beneficiaries. He died intestate August 23, 1920, leaving no wife, child or descendant. The father died November 22, 1926, intestate; the mother February 22, 1932. Her will designated an executrix.

No payment of any kind was made under the policy prior to the mother's death. Thereafter the Bureau of War Risk Insurance determined that during his life the insured became entitled to monthly disability payments aggregating $862.50 and caused this sum to be paid to his administrator. Also that while alive the father, as beneficiary, became entitled to installments aggregating $2,127.50 which was paid to his administrator. Further that during her life the mother, as beneficiary, became entitled to payments aggregating $3,938.75. This sum was paid to her executrix. Finally it ruled that the commuted value of unpaid monthly installments under the policy payable after the mother's death amounted to $5,768, and the assured's administrator collected this. The only funds received by him were from payments under the policy as above stated.

This proceeding, with proper parties, was duly begun by the assured's administrator in the Superior Court of Mecklenburg County, North Carolina. It sought binding direction concerning distribution of funds on hand and presented no other question.

The trial court ruled that at the soldier's death his father and mother became sole distributees of his estate; "that as to the $862.50 which was due the insured prior to his death, it belongs to the estate of the father and the estate of the mother equally; that as to the $5,768 received by him [the administrator] as the commuted value of the unpaid portion of the policy after the death of the beneficiaries, it should be paid to the estate of the father and the estate of the mother respectively in such sums as are required to bring the said estates to an equal sum after the sums paid into each by the Bureau of War Risk Insurance, and the half of the $862.50 has been added together; the intention of this finding being to make the estate of the father and the estate of the mother exactly equal finally."

Upon appeal the Supreme Court of North Carolina affirmed. It said:

> "When Moses Reid died his distributees were his father Adolphus Reid, and his mother, Ida Reid. Both were living. The statute cast upon each one-half of the personal property of deceased. Thereupon the right of property to such one-half immediately vested. C. S. 137, sub-section 6.
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> "Neither received as beneficiary in the War Risk Insurance policy any installment from the government during his or her life. Therefore the whole fund in contemplation of law is now assets of the estate of the dead soldier, to be distributed immediately to the estates of his father and mother. The fact that one beneficiary lived longer than the other and hence entitled to receive more money in installments from the government has nothing to do with the right of property as distributee. The intestate law of this State pegged that right at the death of the soldier".

In *Singleton* v. *Cheek*, 284 U. S. 493, where the circumstances were similar to those presented here, nothing was paid under the policy until after the death of the wife, the designated beneficiary. We considered the applicable provisions of Sec. 303, World War Veterans' Act of 1924 as amended March 4, 1925, c. 553, 43 Stat. 1302, 1310 (38 U. S. C. A. Sec. 514), declared them retroactive to October 6, 1917, and held that installments which accrued before the death of the insured, and the commuted value of those accruing subsequent to the beneficiary's death belonged to the insured's estate for distribution as of the moment of his death. Benefits

accrued in favor of but not received by the widow during her life had been paid to her administrator. No suggestion was made that other disposition would have been proper. At page 497 the opinion says:

> "By that amendment, [March 4, 1925*] the rule, which upon the happening of the contingencies named in the prior acts, limited the benefits of the unpaid installments to persons within the designated class of permittees, was abandoned, and 'the estate of the insured' was wholly substituted as the payee. All installments, whether accruing before the death of the insured or after the death of the beneficiary named in the certificate of insurance, as a result, became assets of the estate of the insured as of the instant of his death, to be distributed to the heirs of the insured in accordance with the intestacy laws of the state of his residence, such heirs to be determined as of the date of his death, and not as of the date of the death of the beneficiary".

Considering what was said in *United States* v. *Worley*, 281 U. S. 339, 341, and in *Singleton* v. *Cheek*, *supra*, together with the language and evident purpose of the Act of 1924 as amended, we think it clear enough that installments which accrued in favor of the father and mother of Reid as beneficiaries during their lives became the property of their respective estates. Also that installments which accrued to the assured during his lifetime, and the commuted value of the installments payable subsequent to the mother's death, became the property of his estate.

The court below erred in directing that the installments which accrued to the beneficiaries—father and mother—during their lives should be treated as parts of the estate of the insured. See *Reivich* v. *United States*, 25 F. (2d) 670, 672; *United States* v. *Woolen*, 25 F. (2d) 673, 676.

Reversed.

*"If no person within the permitted class be designated as beneficiary for yearly renewable term insurance by the insured either in his lifetime or by his last will and testament or if the designated beneficiary does not survive the insured or survives the insured and dies prior to receiving all of the two hundred and forty installments or all such as are payable and applicable, there shall be paid to the estate of the insured the present value of the monthly installments thereafter payable, said value to be computed as of date of last payment made under any existing award." 43 Stat. 1310.